

16-581 LEIDOS V. IN PUBLIC RETIREMENT

DECISION BELOW: 818 F.3d 85

LOWER COURT CASE NUMBER: 14-4140

QUESTION PRESENTED:

Under Section 10(b) of the Securities Exchange Act of 1934 and its accompanying Rule 10b-5, an omission may be fraudulent only if the omitted information is necessary to make an affirmative statement "not misleading." Thus, "companies can control what they have to disclose ... by controlling what they say to the market." *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 45 (2011). In the decision below, however, the Second Circuit held that a company can be liable for securities fraud merely for omitting information required by a Securities and Exchange Commission ("SEC") regulation, even if those disclosures are not necessary to make affirmative statements not misleading.

The question presented is:

Whether the Second Circuit erred in holding-in direct conflict with the decisions of the Third and Ninth Circuits-that Item 303 of SEC Regulation S-K creates a duty to disclose that is actionable under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.

CERT. GRANTED 3/27/2017